

HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RANDALL STEVENS,

Plaintiff,

vs.

PIERCE COUNTY and, individually,  
Deputies COLBY EDWARDS, GREGGORY  
MARTY, and BRENT TULLOCH, and  
Defendants DOE 1-10,

Defendants.

NO. 3:22-cv-05862

DEFENDANTS PIERCE COUNTY, COLBY  
EDWARDS, GREGGORY MARTY AND  
BRENT TULLOCH'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFF'S COMPLAINT FOR  
DAMAGES

**COME NOW** Defendants Pierce County, Colby Edwards, Gregory Marty, and Brent Tulloch (collectively "Defendants"), by and through their attorneys of record, Mary E. Robnett, Pierce County Prosecuting Attorney, and Jennifer D. Loynd and Kristal M. Cowger, Deputy Prosecuting Attorneys, and submit the following Answer to Plaintiffs' Complaint for Damages. These answering Defendants deny each and every allegation in Plaintiff's Complaint not specifically admitted below.

**I. INTRODUCTION**

1. In answer to Paragraph 1, Defendants admit only that Plaintiff Randall Stevens (Plaintiff) was 55 years old on the date of the alleged incident, involved in a vehicle pursuit with

1 law enforcement officers (LEOs) which ended on his property, and he resisted arrest. Defendants  
2 lack information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's  
3 career and the clothing he was wearing on the date of the alleged incident, and therefore deny the  
4 same. Defendants deny all remaining allegations contained in Paragraph 1.

5 2. In answer to Paragraph 2, Defendants admit only that Plaintiff was sprayed with  
6 pepper spray. Defendants lack information sufficient to form a belief as to the truth of the  
7 allegations concerning Plaintiff's viewing of video footage related to George Floyd, and therefore  
8 deny the same. Defendants deny all remaining allegations contained in Paragraph 2.

9 3. In answer to Paragraph 3, Defendants admit only that Deputy Brent Tulloch struck  
10 Plaintiff's ankle with his flashlight while Plaintiff resisted arrest. Defendants deny all remaining  
11 allegations contained in Paragraph 3.

## 12 II. PARTIES

13 4. Defendants lack information sufficient to form a belief as to the truth of the  
14 allegations contained in Paragraph 4 and therefore deny the same.

15 5. Paragraph 5 does not contain factual allegations to which a response is required  
16 and, therefore, none is given.

17 6. In answer to Paragraph 6, Defendants admit only that Pierce County is a political  
18 subdivision of the State of Washington. Defendants deny all remaining allegations contained in  
19 Paragraph 6.

20 7. Paragraph 7 does not contain allegations directed towards these answering  
21 Defendants to which a response is required and, therefore, none is given.

22 8. In answer to Paragraph 8, Defendants admit the same.

23 9. In answer to Paragraph 8, Defendants admit the same.

24 ///



1           19.     In answer to Paragraph 19, Defendants only admit that a portion of the alleged  
2 incident occurred on property located at 25017 112<sup>th</sup> Avenue East in Buckley, Washington.  
3 Defendants deny all remaining allegations contained in Paragraph 19.

4           20.     In answer to Paragraph 20, Defendants admit only that the alleged incident occurred  
5 on August 13, 2020, at or around 22:14. Defendants deny all remaining allegations contained in  
6 Paragraph 20.

7           21.     In answer to Paragraph 21, Defendants deny the same.

8           22.     Defendants lack information sufficient to form a belief as to the truth of the  
9 allegations contained in Paragraph 22 and therefore deny the same.

10          23.     In answer to Paragraph 23, Defendants admit only that while Plaintiff was in his  
11 vehicle and disregarding LEOs' commands, Pierce County Sheriff's Deputy Ara Steben deployed  
12 his Conducted Electrical Weapons (CEW) Taser to Plaintiff's upper chest area, Plaintiff pulled the  
13 Taser wires out, and Deputy Steben broke the passenger side window of Plaintiff's vehicle with  
14 his flashlight. Defendants deny all remaining allegations contained in Paragraph 23.

15          24.     In answer to Paragraph 24, Defendants lack information sufficient to form a belief  
16 as to what Mr. Stevens was thinking, and therefore deny the same.

17          25.     In answer to Paragraph 25, Defendants deny the same.

18          26.     In answer to Paragraph 26, Defendants admit only that while Plaintiff was in his  
19 vehicle, gripping the steering wheel and disregarding LEOs' commands, Deputy Steben struck  
20 Plaintiff's hands with his flashlight and Deputy Gregory Marty deployed Oleoresin Capsicum  
21 (OC) pepper spray. Defendants deny all remaining allegations contained in Paragraph 26.

22          27.     In answer to Paragraph 27, Defendants deny the same.

23          28.     In answer to Paragraph 28, Defendants admit only that after Deputy Marty deployed  
24 pepper spray and Deputy Steben struck Plaintiff's hands with his flashlight, Plaintiff took his hands

1 off the steering wheel, that LEOs pulled Plaintiff out from his vehicle and onto the ground, and  
2 that Deputy Steben secured Plaintiff's left hand in handcuffs. Defendants deny all remaining  
3 allegations contained in Paragraph 28.

4 29. In answer to Paragraph 29, Defendants admit only that Plaintiff continued to resist  
5 arrest after he was removed from his vehicle. Defendants deny all remaining allegations contained  
6 in Paragraph 29.

7 30. In answer to Paragraph 30, Defendants deny the same.

8 31. In answer to Paragraph 31, Defendants deny the same.

9 32. In answer to Paragraph 32, Defendants deny the same.

10 33. Defendants lack information sufficient to form a belief as to the truth of the  
11 allegations concerning Plaintiff's career and use of drugs or alcohol contained in Paragraph 33  
12 and, therefore, deny the same. Defendants deny all remaining allegations contained in Paragraph  
13 33.

14 34. In answer to Paragraph 34, Defendants admit only that while Plaintiff continued to  
15 resist arrest, Deputy Colby Edwards deployed his Taser directly to Plaintiff's leg. Defendants deny  
16 all remaining allegations contained in Paragraph 34.

17 35. In answer to Paragraph 35, Defendants deny the same.

18 36. In answer to Paragraph 36, Defendants deny the same.

19 37. In answer to Paragraph 37, Defendants deny the same.

20 38. In answer to Paragraph 38, Defendants deny the same.

21 39. In answer to Paragraph 39, Defendants admit only that while Plaintiff continued to  
22 resist arrest, Deputy Tulloch struck Plaintiff's leg near the ankle with his flashlight. Defendants  
23 deny all remaining allegations contained in Paragraph 39.

24 40. In answer to Paragraph 40, Defendants deny the same.

1           41.     In answer to Paragraph 41, Defendants deny the same.

2           42.     In answer to Paragraph 42, Defendants admit only that medical assistance was  
3 requested and responded to the scene and that Plaintiff walked to the ambulance where he was  
4 evaluated. Defendants deny all remaining allegations contained in Paragraph 42.

5           43.     In answer to Paragraph 43, Defendants admit only that LEOs transported Plaintiff  
6 to the MultiCare Bonney Lake Emergency Department where he was evaluated and received  
7 medical care before being transported to the Pierce County Jail. Defendants deny all remaining  
8 allegations contained in Paragraph 43.

9           44.     In answer to Paragraph 44, Defendants admit only that Plaintiff was released from  
10 Pierce County Jail on bail or about August 18, 2020. Defendants lack information sufficient to  
11 form a belief as to the truth of the remaining allegations contained in Paragraph 44 and therefore  
12 deny the same.

13          45.     In answer to Paragraph 45, Defendants admit only that Plaintiff returned to Pierce  
14 County Jail on November 20, 2020. Defendants lack information sufficient to form a belief as to  
15 the truth of the remaining allegations contained in Paragraph 45 and therefore deny the same.

16          46.     In answer to Paragraph 46, Defendants admit only that medical records associated  
17 with medical care provided to Plaintiff speak for themselves. Any additional argument,  
18 speculation, interpretation or analysis of medical records are denied.

19          47.     In answer to Paragraph 47, Defendants deny the same.

20          48.     Paragraph 48 is not directed at these answering Defendants and therefore no  
21 response is required and none is given. To the extent a response is required, Defendants deny the  
22 same.

23          49.     In answer to Paragraph 49, Defendants admit only that on October 15, 2021,  
24 Plaintiff entered a Statement of Defendant on Plea of Guilty in Pierce County Superior Court and

1 the pleading speaks for itself. Defendants lack information sufficient to form a belief as to the  
2 truth of the remaining allegations contained in Paragraph 49 and therefore deny the same.

3 50. In answer to Paragraph 50, Defendants deny the same.

4 51. In answer to Paragraph 51, Defendants deny the same.

5 52. In answer to Paragraph 52, Defendants deny the same.

6 **V. FEDERAL CAUSES OF ACTION**

7 **FIRST CLAIM**

8 **EXCESSIVE FORCE in Violation of 4<sup>th</sup> Amendment (against Defendants Tulloch and  
9 Pierce County).**

10 53. In answer to Paragraph 53, Defendants deny the same.

11 54. In answer to Paragraph 54, Defendants deny the same.

12 55. In answer to Paragraph 55, Defendants deny the same.

13 56. In answer to Paragraph 56, Defendants deny the same.

14 57. In answer to Paragraph 57, Defendants deny the same.

15 58. In answer to Paragraph 58, Defendants deny the same.

16 59. In answer to Paragraph 59, Defendants deny the same.

17 60. In answer to Paragraph 60, Defendants deny the same.

18 **SECOND CLAIM**

19 **EXCESSIVE FORCE in Violation of 4<sup>th</sup> Amendment (against Defendants Tulloch and  
20 Pierce County).**

21 61. In answer to Paragraph 61, Defendants deny the same.

22 62. In answer to Paragraph 62, Defendants deny the same.

23 63. In answer to Paragraph 63, Defendants deny the same.

24 64. In answer to Paragraph 64, Defendants deny the same.

65. In answer to Paragraph 65, Defendants deny the same.

66. In answer to Paragraph 66, Defendants deny the same.

**THIRD CLAIM**

**EXCESSIVE FORCE in Violation of 4<sup>th</sup> Amendment (against Defendants Tulloch and Pierce County).**

67. In answer to Paragraph 67, Defendants deny the same.

68. In answer to Paragraph 68, Defendants deny the same.

69. In answer to Paragraph 69, Defendants deny the same.

70. In answer to Paragraph 70, Defendants deny the same.

**FOURTH CLAIM**

**FAILURE TO ACCOMMODATE A DISABILITY in Violation of Title II of the ADA, 42 USC § 12131 et seq. (against Defendant Pierce County).**

71. In answer to Paragraph 71, Defendants admit only that Pierce County is a public entity which operates the Pierce County Jail. Defendants lack information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 71 and therefore deny the same.

72. In answer to Paragraph 72, Defendants deny the same.

73. In answer to Paragraph 73, Defendants deny the same.

74. In answer to Paragraph 74, Defendants deny the same.

**VI. STATE CAUSES OF ACTION**

**FIFTH CLAIM**

**NEGLIGENCE (against Pierce County and Defendants Edwards, Marty, Tulloch and Defendants DOE)**

75. Paragraph 75 contains a legal conclusion to which no answer is required and none is given. To the extent a response is required, Defendants deny the same.

76. In answer to Paragraph 76, Defendants deny the same.



1 77. In answer to Paragraph 77, Defendants deny the same.

2 78. In answer to Paragraph 78, Defendants deny the same.

3 79. Paragraph 79 does not contain allegations directed towards these answering  
4 Defendants to which a response is required and, therefore, none is given.

5 80. In answer to Paragraph 80, Defendants deny the same.

6 **SIXTH CLAIM**

7 **COMMON LAW BATTERY (against Defendants Edwards, Marty, Tulloch and  
8 Pierce County)**

9 81. In answer to Paragraph 81, Defendants deny the same.

10 82. In answer to Paragraph 82, Defendants deny the same.

11 83. In answer to Paragraph 83, Defendants deny the same.

12 84. In answer to Paragraph 84, Defendants deny the same.

13 **VII. RELIEF SOUGHT**

14 Defendants deny that Plaintiff is entitled to the relief requested in Paragraphs 85 through  
15 89 or to any relief whatsoever from these answering Defendants. To the extent any allegations set  
16 forth in Plaintiff's prayer for relief set forth in Paragraphs 85 through 89 may be deemed to  
17 constitute averments of material fact, they are denied.

18 **VIII. AFFIRMATIVE DEFENSES**

19 **BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES**, Defendants  
20 allege as follows:

21 1. **FAILURE TO STATE A CLAIM**: Plaintiff has failed to state a claim upon which  
22 relief may be granted.

23 2. **STATUTE OF LIMITATIONS**: Plaintiff's cause of action for battery is barred by  
24 expiration of the statute of limitations pursuant to RCW 4.16.100.

1           3.     IMMUNITY: Defendants are immune from suit for the matters alleged in  
2 Plaintiff's Complaint.

3           4.     QUALIFIED IMMUNITY: Defendants are entitled to qualified immunity as to  
4 Plaintiff's federal and state claims.

5           5.     DISCRETIONARY IMMUNITY: Defendants acted as appointed or elected public  
6 officials, public employees, or public agencies as defined in RCW 4.24.470, or units of local  
7 government and its employees, as provided in RCW 36.28A.010, and are therefore immune from  
8 civil action for damages for any discretionary level decisions or release of relevant and necessary  
9 information to other public officials, public employees, or public agencies, and to the general  
10 public. RCW 4.24.550(7).

11          6.     DISCRETIONARY IMMUNITY: All actions of Defendants alleged as negligence  
12 manifest a reasonable exercise of judgment and discretion by authorized public officials made in  
13 the exercise of governmental authority entrusted to them by law and are neither tortious nor  
14 actionable.

15          7.     GOOD FAITH: At all times, Defendants acted in good faith in the performance of  
16 their duties and are therefore immune from suit for matters alleged in Plaintiff's Complaint.

17          8.     REASONABLE AND LAWFUL FORCE: Any force utilized by Defendants was  
18 reasonable, necessary and lawful under the circumstances.

19          9.     ACTIONS BY NONPARTIES: Discovery may show that Plaintiff's claimed  
20 injuries and damages, if any, were proximately caused or contributed to by the fault of presently  
21 unknown third parties and/or nonparties to this action. Defendants request an apportionment of  
22 fault under RCW 4.22.070.

23          10.    COMPARATIVE FAULT: Discovery may show that that Plaintiff's claimed  
24 injuries and damages, if any, were proximately caused or contributed to by Plaintiff's own actions,

both intentional and/or negligent, as defined by RCW 4.22.015, and Defendants' liability should be reduced accordingly.

11. INTOXICATION: Plaintiff's claimed injuries and damages, if any, were proximately caused or contributed to by Plaintiff's intoxication.

12. MITIGATION OF DAMAGES: Discovery may show Plaintiff failed to mitigate his claimed injuries and damages, if any.

13. ALLOCATION OF FAULT: Defendants are entitled to an allocation of fault and a determination of the proportionate share of all persons or entities allegedly causing damages for which Plaintiff seeks recovery.

14. PRECEDING, INTERVENING, AND/OR SUPERSEDING CAUSES: Discovery may show Plaintiff's claimed injuries and damages, if any, were caused or made worse by the preceding, intervening, and/or superseding negligence of others.

#### **IX. RESERVATION**

Defendants reserve the right to amend their Answer to allege additional affirmative defenses that may become known during the course of discovery, and to make such amendments either before or during trial, including asserting other defense theories or conforming the pleadings to the proof offered at the time of trial.

#### **X. PRAYER FOR RELIEF**

**WHEREFORE**, having fully answered Plaintiff's Complaint for Damages, Defendants pray that this court dismiss Plaintiff's Complaint with prejudice, that Plaintiff take nothing by his Complaint, and that Defendants be allowed their costs and reasonable attorneys' fees, and for any further relief as may appear just and equitable.

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1 DATED this 26<sup>th</sup> day of January, 2023.

2  
3 s/ Jennifer D. Loynd

4 JENNIFER D. LOYND, WSBA No. 33129  
5 KRISTAL M. COWGER, WSBA No. 43079  
6 Pierce County Prosecutor / Civil  
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9 **CERTIFICATE OF SERVICE**

10 On January 26, 2023, I hereby certify that I electronically filed the foregoing  
11 DEFENDANTS PIERCE COUNTY, COLBY EDWARDS, GREGGORY MARTY AND  
12 BRENT TULLOCH'S ANSWER AND AFFIRMATIVE DEFENSES with the Clerk of the  
Court using the CM/ECF system which will send notification of such filing to the following:

13 Jackson Millikan  
14 Law Office of Jackson Millikan  
15 2540 Kaiser Rd.  
Olympia, WA 98502

16 Jackson@Millikanlawfirm.com

17 s/ JENNIFER CROCKER

18 JENNIFER CROCKER  
19 Legal Assistant / Civil  
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